

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF WISCONSIN

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OSCAR GARNER,

Plaintiff,

v.

JEFFREY JOPP,

Defendant.

ORDER

11-cv-719-slc

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Plaintiff Oscar Garner is proceeding in this action on his claim that defendant Jeffrey Jopp violated his rights under the Eight Amendment by failing to take reasonable measures in response to his asthma attack. Defendant has answered and a pretrial conference was held on March 7, 2012. Now before the court is plaintiff's second motion for appointment of counsel. Like plaintiff's first motion for appointment of counsel, this motion is premature and will be denied.

In his motion, plaintiff states that he does not have a high school diploma and has been diagnosed with psychomotor retardation and psychosis. He further states that the person who was helping him with this case is on the transfer list to be moved to another institution.

As a starting point, this court would appoint a lawyer to almost every pro se plaintiff if lawyers were available to take these cases. But they are not. Most lawyers do not have the time, the background or the desire to represent pro se plaintiffs in a pro bono capacity, and this court cannot make them. Congress has appropriated finds for court-appointed counsel in criminal cases but it has not appropriated any funds for court-appointed counsel in civil cases like this one. Lawyers who accept appointments to represent pro se plaintiffs in civil cases can obtain compensation for their services only if they are successful and even then, the compensation may

fall short of their time and effort. So the court only appoints counsel in cases where there is a demonstrated need, using the appropriate legal test.

In the few weeks that have passed since plaintiff filed his first motion asking for a lawyer, not much has changed in this lawsuit. When Judge Crabb denied plaintiff's first motion, she stated that it was too early to tell whether appointment of counsel is warranted in this case, and that so far there was nothing in the record suggesting that the facts and law relevant to plaintiff's claims were so complicated that they exceeded plaintiff's demonstrated ability to prosecute those claims. *Pruitt v. Mote*, 503 F.3d 647, 654-55 (7th Cir. 2007). This situation has not changed. The facts of this case are pretty straightforward, they are within plaintiff's personal knowledge, and the law governing plaintiff's claims was explained to him in the January 4, 2012 order granting him leave to proceed. In addition, in the March 9, 2012 pretrial conference order, plaintiff was provided a copy of the procedures to use to prove his claims, which were written for the very purpose of helping pro se litigants understand how federal civil cases work in this court. Plaintiff is encouraged to re-read the March 9, 2012 pretrial conference order. There is no way of knowing yet if plaintiff's case will go to trial. Many cases are resolved before trial, either on dispositive motions or through settlement. If the case does go to trial, the court will issue an order about two months before the trial date describing how the court conducts a trial and explaining to the parties what written materials they are to submit before trial.

So far, plaintiff's submissions have been coherent and well organized. They do not show that plaintiff's asserted mental health problems have hindered his ability to prosecute this lawsuit. If at some point plaintiff does not understand something that is happening in this case, he is free to write to the court to ask for clarification.

Therefore, at this early stage of the case, I conclude that plaintiff has not shown that he is incapable of prosecuting this case on his own. This ruling reflects my assessment of plaintiff's ability at *this* stage; if at some point plaintiff's mental health issues actually keep him from litigating the case, then he is free to renew his motion for appointment of counsel.

#### ORDER

IT IS ORDERED that plaintiff's second motion for appointment of counsel, dkt. 20, is DENIED without prejudice.

Entered this 1<sup>st</sup> day of June, 2012.

BY THE COURT:

/s/

STEPHEN L. CROCKER  
Magistrate Judge